**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| 1998 Biennial Regulatory Review -- | ) | CC Docket No. 98-131 |
| Part 61 of the Commission's Rules | ) | |
| and Related Tariffing Requirements | ) | |

# COMMENTS OF AMERITECH

Michael S. Pabian
Counsel for Ameritech
Room 4H82
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025

Regulatory Specialists:

Margaret Williams
Kathy Fritz
Michael Alarcon
Phillip Romo
Terry Mosher

Dated: October 16, 1998

# TABLE OF CONTENTS

**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| 1998 Biennial Regulatory Review -- | ) | CC Docket No. 98-131 |
| Part 61 of the Commission's Rules | ) | |
| and Related Tariffing Requirements | ) | |

## COMMENTS OF AMERITECH

Ameritech[1] submits these comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned matter.[2]

## I. INTRODUCTION AND SUMMARY.

Section 11 of the Communications Act requires the Commission to conduct a biennial review of all regulations that apply to telecommunications service providers. As part of the required review, the Commission, in the NPRM, proposes to eliminate several rules "that no longer seem to serve any useful purpose," "to move some rules to eliminate confusion," to delete duplicative rules "in a manner that does not affect any of the substantive requirements currently placed on carriers," and to revise rules to eliminate the need for granting waivers which are

---

[1] Ameritech means: Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, and Wisconsin Bell, Inc.

[2] *In the Matter of 1998 Biennial Regulatory Review -- Part 61 of the Commission's Rules and Related Tariffing Requirements,* CC Docket No. 98-131, Notice of Proposed Rulemaking, FCC 98-164 (released July 24, 1998) ("NPRM").

routinely granted in any event.[3] While Ameritech does not dispute the propriety -- or the real need -- of a "clean-up" review of this type, Ameritech suggests that the Commission's proposals do not go far enough to satisfy the statutory requirement.

As the Commission itself notes, the statute requires that the Commission's biennial review should "determine whether any of these regulations are no longer necessary in the public interest as a result of meaningful economic competition."[4] It is clear, then, that Congress had something much more in mind than a clerical examination of the Commission's regulations. Again, Ameritech does not dispute the fact that duplicative rules should be eliminated, confusing rules should clarified, and rules that no longer have applicability because of the passage of time or changes in administrative technology should be deleted. However, it is clear that, in light of the "pro-competitive, de-regulatory national policy framework" adopted in the Telecommunications Act of 1996,[5] Congress intended the biennial review to be a more fundamental policy examination into whether specific regulations were necessary in light of the state of competition in the telecommunications marketplace. The NPRM does not undertake that task.

However, Ameritech is not unmindful of the fact that the Commission has recently requested parties to update the record in its access charge reform and price cap proceedings.[6] In addition, the United States Telephone Association ("USTA"), on September 30, filed its petition

---

[3] *Id.* at ¶2.

[4] *Id.* at ¶1.

[5] Conference Report 104-458 at 1.

[6] *Public Notice, Commission Asks Parties to Update and Refresh Record for Access Charge Reform and Seeks Comment on Proposals for Access Charge Reform Pricing Flexibility*, CC Docket Nos. 96-262, 94-1, 97-250, RM-9210, FCC 98-126 (released October 5, 1998) ("Public Notice").

for rulemaking asking the Commission to undertake a more fundamental review of its rules to fulfill the mandate of §11. As it relates to the NPRM, USTA's petition looks at, *inter alia*, Part 61 of the Commission's rules. In its comments in this docket, USTA is including relevant portions of its petition for rulemaking, thus making it a part of the record in this proceeding. It is Ameritech's hope that the resulting informational submissions in these proceedings will enable the Commission to act quickly to modify its rules to reflect marketplace realities and complete the implementation of a market-driven access pricing flexibility framework.

In Section II of these comments, Ameritech will address the rule modifications specifically addressed by the Commission in the NPRM. In Section III of these comments, Ameritech will address those aspects of USTA's petition that relate to the subject matter of the NPRM -- Part 61 of the Commission's rules.

## II. NPRM PROPOSED RULE CHANGES.

In this section, Ameritech will comment specifically on those changes proposed by the Commission in the NPRM.

### A. Electronic Tariff Filing.

The Commission has adopted regulations which require electronic filing of tariffs and associated documents by incumbent local exchange carriers ("ILECs").[7] In the NPRM, the Commission proposes to amend Part 61 to apply to carriers submitting filing fees electronically.[8]

Ameritech suggests one modification to the rules in addition to those suggested by the Commission. Currently, the rules state that, if the Commission receives a tariff transmission

---

[7] See, NPRM at ¶4.

[8] *Id.*

after 5:30 P.M. Eastern Time, the transmission is dated and timed as received the following business day. If that affects the notice period, carrier must re-file the tariff package, changing the issue and effective dates on all tariff sheets filed. In addition, the carrier must submit another filing fee.[9] However, in those cases in which electronic filing is delayed beyond 5:30 P.M. Eastern Time because of errors or failures in the Commission's system receiving the filing, carriers should be able to re-file the material without penalty. Therefore, Ameritech recommends that the electronic filing language be changed to permit carriers to change the issue and effective date on tariff pages and to file the material without an additional filing fee in cases where the original filing is delayed due to errors or failures in the Commission's system.

**B. Posting.**

Section 61.72 of the Commission's rules currently requires issuing carriers to keep copies of their tariffs accessible to the public during normal business hours. Specifically, carriers must post tariffs in at least one business office in each state or territory in which the carrier does business. As the Commission correctly observes, however, the Commission's current electronic tariff filing system ("ETFS") makes carrier tariffs available at the Commission's Internet website. Moreover, anyone can obtain copies of any carrier's tariff from the Commission's copying contractor through mail or by fax. The Commission correctly concludes that:

> [F]or many customers, it is at least possible that traveling to the carrier's business office would not be the most efficient or convenient method of examining a carrier's tariff.[10]

In this light, it makes sense to modify §61.72 to require only that carriers provide a telephone

---

[9] §61.14.

[10] NPRM at ¶6.

number for public inquiries about information contained in their tariffs.[11] With widespread access to carriers' tariffs via the Internet, there is no need to maintain a "physical" set of those tariffs in a business office that may be readily accessible by only a fraction of the carriers' customers. Through the Internet, these tariffs are available at public libraries or even at home for the many customers who are "on line". In this light, the Commission should eliminate the "posting" requirements contained in §61.72.

### C. Minimum Effective Period.

The Commission's rules currently require that a tariff must be in effect for at least 30 days before the issuing carrier may revise it. The Commission has proposed to modify this rule only by reducing the period to fifteen days for non-dominant carriers.[12] The Commission does not propose to modify the rule for dominant carriers because, it states, those carriers retain market power and face a much lesser degree of market pressure.[13] The Commission should not create another distinction between dominant and non-dominant carriers in its rules but rather eliminate the minimum effective period altogether -- for all carriers.[14] Tariff notice periods as applied to tariff changes provide all the "stability" that is necessary.

Moreover, as the Commission itself notes,[15] Congress itself dictated a change to tariff notice periods to facilitate carrier response in the pro-competitive world of telecommunications envisioned by the Telecommunications Act of 1996. Since the Act permits the filing of rate

---

[11] *Id.* at ¶7.

[12] *Id.* at ¶8.

[13] *Id.* at ¶9.

[14] This change is also recommended by the USTA petition.

[15] NPRM at ¶12.

decreases and increases on seven and fifteen days' notice, respectively, a minimum effective period longer than those timeframes would appear to conflict with Congress's intent. Moreover, at least for ILEC interstate access services (the vast bulk of the interstate services offered by "dominant" carriers), the customers are very large and very sophisticated. They are not the "consumers" that the Commission speaks of needing protection from "disruptive or confusing rate churn."[16] In fact, if any consumers need that protection, it would be customers of interstate domestic message telephone service ("MTS") offered by domestic IXCs -- all of whom are now considered non-dominant. Nonetheless, Ameritech strongly recommends that the minimum effective period currently contained in the Commission's rules be eliminated altogether.

**D. Reorganization of Part 61.**

The Commission has proposed to reorganize provisions currently in Part 61 of its rules in order for carriers to more easily identify rules applicable to their situations.[17] In this regard, Ameritech recommends the approach offered by USTA in its petition and will discuss the merits of that approach in Section III below.

**E. Notice Requirements.**

As the Commission notes, there is some potential inconsistency between notice periods specified in the Commission's rules and those articulated in §204(a)(3) of the Act.[18] Ameritech recommends the consolidation and clarification approach adopted by USTA in its petition for

---

[16] *Id.* at ¶8.

[17] *Id.* at ¶¶10-11.

[18] *Id.* at ¶12.

rulemaking.[19] In substantial part, the USTA proposal implements the approach noted by the Commission in its request for comments -- eliminating all notice requirements for dominant carriers other than those mandated by the §204(a)(3). USTA, however, proposes a shorter period for corrections and longer period for above-band filings.

**F. Revisions to Price Cap Rules.**

The Commission proposes changes to deal with problems relating to cross referencing X-factor calculations for interexchange carriers, optional incentive regulation for small and mid-sized ILECs, "targeting" of exogenous cost changes, and other items related to price cap calculations.[20] As the case with Part 61 generally, Ameritech recommends the comprehensive approach offered by USTA in its petition for rulemaking.[21] Part of that approach deals with the issue specifically raised by the Commission concerning making permanent the USTA-requested waiver of §69.153 to base presubscribed interexchange carrier charges ("PICCs") on base period data.[22]

In addition, however, Ameritech would point out certain problems or ambiguities involved with the specific language proposed by the Commission for certain subsections or paragraphs of §61.45 and §61.47 of the rules. Those issues and Ameritech's recommended solutions are set forth in Attachment A included with this filing.

---

[19] See, Section III, *infra.*

[20] NPRM at ¶¶16-19.

[21] See, Section III, *infra.*

[22] NPRM at ¶18.

## III. USTA's PETITION.

As noted above, certain aspects of USTA's petition for rulemaking filed on September 30 relate directly to a review of Part 61 of the Commission's rules under the auspices of §11 of the Act. Specifically, those parts of the USTA petition that deal with Part 61, Part 65, Part 69, and USTA's proposed new Part XX all logically grow out of an examination of the tariffing requirements currently in Part 61. Therefore, Ameritech recommends that the Commission examine those aspects of USTA's petition in this proceeding and quickly adopt USTA's proposals in that regard.

Ameritech supports USTA's proposed changes. The approach is comprehensive and clarifying. It organizes the Commission's rules in a way that is more appropriate for the competitive environment that is rapidly evolving in the world of telecommunications. These more fundamental modifications of the Commission's rules are necessary to ensure that those rules can serve the public interest, enhance consumer welfare, reflect the evolving nature of technology, and ensure the promotion of competition -- not individual competitors.

USTA's proposal changes Part 61 to contain only the tariff requirements. It moves rules associated with price cap regulation to a new Part XX that would be devoted solely to that topic. Rules associated with rate of return regulation would be moved to Part 69.

Substantive changes involved in USTA's rewrite of Part 61 include permitting ILECs to file contract-based tariffs to facilitate efficient pricing and provide more choices for customers. The proposal also removes new services from price cap regulation and permits filing of tariffs for those services on fifteen days' notice with no cost support. In addition, USTA's proposal deals with other issues of a more administrative nature, including items addressed in the NPRM.

These proposed changes would:

- eliminate the rules for dominant interexchange carrier price cap regulation;
- eliminate the rules for optional incentive regulation;
- eliminate the requirement to maintain a copy of the tariff in the carrier's business office;
- include new rules for electronic tariff filings, including electronic transfer of tariff filing fees;
- extend special permission grants from 60 to 90 days;
- permit tariff reference to any other tariff filed with the Commission or to any technical publication;
- eliminate the requirement that tariffs must be in effect for 30 days before any changes are made; and,
- modify the notice periods for tariff filings to be generally more consistent with the requirements of §204(a)(3) of the Act.

For Part 65, USTA proposes to streamline the rules to reduce the burden on both rate of return and price cap LECs. Reporting requirements are eliminated for rate of return LECs and for price cap LECs except when a lower formula adjustment ("LFA") is filed. The maximum allowable rate of return calculation and the earnings calculation are modified to be based on all elements instead of individually for each access category. These rule changes would reduce unnecessary administrative burdens.

For Part 69, USTA proposes that tariff rules currently in that part be moved to Part 61. The remainder of Part 69 would apply only to rate of return LECs. Significantly, USTA streamlines the access structure into four elements and eliminates the requirement for a public interest showing for new service tariff filing. It would also permit rate of return carriers to obtain some pricing flexibility by establishing a zone price plan for transport, switching, and common

line access elements as well as competitive triggers for removing services from regulation as competition develops. In addition, USTA's proposal includes:

- a new subpart C to address the apportionment of net investment between interexchange, billing and collection, and the new access elements;
- a new subpart D to address the apportionment of expenses between interexchange, billing and collection, and the new access elements;
- the elimination of the common line segregation rules; and,
- moving the universal service funding rules to Part 54.

In its proposed Part XX, USTA consolidates and streamlines the rules currently in Part 61 and 69 applicable to price cap LECs. The proposal includes significant modifications to eliminate the vestiges of rate of return regulation which are no longer required for price cap LECs. The changes also permit increased pricing flexibility to fulfill the promise of the Commission's market-based approach to reforming access charges. As the Commission noted in its Access Reform Order:

> We decide that adopting a primarily market-based approach to reforming access charges will better serve the public interest than attempting immediately to prescribe new rates for all interstate access services based on long run incremental costs or forward looking economic costs of interstate services. Competitive markets are superior mechanisms for protecting consumers by ensuring goods and services are provided to consumers in the most efficient manner possible and at prices that reflect the cost of production. Accordingly, were competition develops, it should be relied upon to protect consumers and the public interest.[23]

To this end, USTA's proposed rule changes include:

- elimination of the codified access structure and the requirement of the public interest showing for new service tariff filings;
- elimination of the study area averaging rule;

[23] *In the Matter of Access Charge Reform, etc.*, CC Docket No. 96-262, *et al.*, First Report and Order, FCC 97-158, (released May 16, 1997) ("Access Reform Order") 12 FCC Rcd. 15982 at ¶263.

- permitted zone pricing for all service categories, including common line, and different zones for individual services;
- establishment of a simplified price cap basket structure consisting of single Network Services Basket with a limited number of service categories -- thereby eliminating many existing service categories and subcategories;
- modification of the subscriber line charge ("SLC") and PICC rate calculations so that the maximum SLC is calculated based on common line revenue per line and the PICC is the difference between the maximum SLC and any SLC cap that is imposed, with the elimination of the PICC caps;
- elimination of the carrier common line ("CCL") charge;
- conversion of the residual interconnection charge to a flat rate charge recovered on a trunk port basis; and,
- creation of a structure to accommodate new rules -- in subpart C -- to permit pricing flexibility based upon a demonstration that appropriate criteria have been satisfied.

As noted above, Ameritech recognizes that the Commission has solicited additional comment from parties in the Commission's access charge reform and price cap dockets.[24] When that record is combined with the record in this proceeding, the Commission will have sufficient basis to move quickly to implement the USTA proposals for Parts 61, 65, 69 and XX.

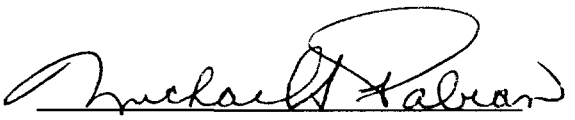
## IV. CONCLUSION.

A review of Part 61 under the auspices of §11 of the Act is appropriate and necessary. The changes proposed in the NPRM, while appropriate in the "clerical" sense, do not go far enough to satisfy the policy-level re-examination Congress requires in §11. Congress understood that the telecommunications marketplace was changing in 1996 and that the rate of change would increase rapidly as a result of the Act. Congress also intended de-regulation to become the

[24] See, note 6, *supra*.

norm.[25] The review conducted under the mandate of §11 must have a deeper focus with that in mind. USTA's proposal fulfills that mandate by providing a comprehensive restructure of Part 61 and related portions of the Commission's rules in a way that accommodates the increasingly competitive telecommunications marketplace.

Respectfully submitted,



Michael S. Pabian
Counsel for Ameritech
Room 4H82
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025
(847) 248-6044

Regulatory Specialists:

Margaret Williams
Kathy Fritz
Michael Alarcon
Phillip Romo
Terry Mosher

Dated: October 16, 1998
[MSP0179.doc]

[25] See, note 5, *supra.*

# Attachment A

Attachment A

**Analysis of NPRM Appendix A**

| PART | ISSUE | RECOMMENDATION |
|---|---|---|
| 61.45(b)(1) | The definition of R states "...and **adding** the products of base period quantities for each PICC...". This adding could cause double counting of PICC revenues. | Change wording from adding to "inclusive of" and include EUCL revenues. |
| | Definition of "w" should be applicable to traffic sensitive and trunking baskets | Change definition to w = R + Delta Z / R |
| 61.45(b)(2) | All of the language with the exception of the first sentence applies to Interexchange Carriers not the ILECs. | Delete all except the first sentence |
| 61.45(b)(4) | No PCI formula or definition of "w" as it applies to the IX basket. | Include current formula and definition of "w" for the IX basket. |
| 61.45(c)(1) | Same as (b)(1) | Use the same definition as 61.45(b)(1). |
| 61.45(i)(1) | Does not consider the correct treatment of Delta Z ,stating "...will not make any reductions to its PCIs associated with the common line and traffic sensitive baskets..." | Need to properly allow for the impact of Delta Z in the computation of Common Line and Traffic Sensitive PCIs. |
| 61.45(i)(2) | Same as 61.45(i)(1) above. | Same as above. |
| 61.45(i)(4) | Develops a ratio of PCI reductions from the common line, traffic sensitive and marketing baskets to the dollar effect of the PCI reduction for the trunking basket. This ratio should use the "R" value for the trunking basket instead. | Change verbiage to trunking basket "R" value |
| 61.47 | Section only included formulas for non-annual filing. | Add annual filing formulas or delete formulas shown. |